

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

(1) SHEPPARD & SONS
CONSTRUCTION, INC.,

Plaintiff,

v.

(1) ESSEX INSURANCE COMPANY,
Defendant.

Case Number: CIV-15-1216-HE

Removed from the District Court of
Canadian County, Oklahoma
Case No. CJ-15-621

NOTICE OF REMOVAL

COMES NOW the Defendant, Essex Insurance Company (“Essex”), by and through the undersigned counsel, and pursuant to 28 U.S.C. §§ 1441, *et seq.*, hereby gives notice of its removal of this action. In support, Essex alleges and states as follows:

1. Defendant Essex is the sole defendant in an action brought against it in the District Court of Canadian County, State of Oklahoma, styled *Sheppard & Sons Construction, Inc. v. Essex Insurance Company*, Case No. CJ-15-621 (hereinafter, “the state court action”).

2. At all pertinent times herein, Plaintiff Sheppard & Sons Construction, Inc. (“Sheppard”) was and is a corporation incorporated under the laws of the State of Oklahoma with its principal place of business in the State of Oklahoma.

3. At all pertinent times herein, Defendant Essex was and is a corporation incorporated under the laws of the State of Delaware with its principal place of business in a state other than Oklahoma.

4. On October 29, 2015, Plaintiff commenced the state court action by filing its Petition in the District Court of Canadian County, Oklahoma.

5. On the morning of October 30, 2015, Essex, through counsel, obtained a copy of the Petition by viewing and printing it from the District Court of Canadian County's internet docket sheet on the Oklahoma State Courts Network (www.oscn.net).

6. Plaintiff's Petition alleges claims arising out of its insurer/insured relationship with Essex, sounding in breach of contract and breach of the duty of good faith and fair dealing. Plaintiff seeks damages in excess of \$75,000.00, in addition to punitive damages.

7. Plaintiff's action is related to a declaratory action currently pending before this Court styled *Essex Insurance Company v. Sheppard & Sons Construction, Inc., et al.*, Case No. CIV-12-1022-D. In that federal action, set before District Judge Timothy D. DeGiusti, Essex seeks declaratory relief from the Court regarding the same coverage obligations at issue in Plaintiff's now-filed state court action. Plaintiff previously attempted to bring its present claims against Essex as a counterclaim in that federal action, but by Order entered July 9, 2015, filed at Doc. 200 in Case No. CIV-12-1022-D, Judge DeGiusti held Plaintiff's claims were untimely. The federal action is currently set for jury trial in December 2015.

8. This Court would have had original jurisdiction over this matter. Moreover, Sheppard's Petition violates the rule against claim splitting. *See Horwitz v. Fox*, No. CIV-14-644-D, 2014 WL 3670537, *2 (W.D. Okla. July 22, 2014); *Casto v. Arkansas-Louisiana Gas Co.*, 597 F.2d 1323 (10th Cir. 1979).

9. The parties to this action are completely diverse and Plaintiff's claim alleges a sufficient amount in controversy, giving this Court subject matter jurisdiction

pursuant to 28 U.S.C. § 1332(a). Further, because this matter is removed from the District Court of Canadian County, Oklahoma, venue for this action is proper in this Court. *See* 28 U.S.C. § 1441(a) (action to be removed “to the district court of the United States for the district and division embracing the place where such action is pending”).

10. Pursuant to 28 U.S.C. § 1446(a), a copy of the state court action’s petition is attached hereto and marked “Exhibit ‘1’”.

11. Pursuant to LCvR 81.2(a), a copy of the state court action’s docket sheet, obtained online from the Oklahoma State Courts Network website (www.oscn.net) on October 30, 2015, is attached hereto and marked “Exhibit ‘2’”.

12. There are no other defendants to this action, thus there is no additional consent required for this Notice.

WHEREFORE, Defendant Defendant Essex Insurance Company having effected removal of this action, prays this Court assume jurisdiction accordingly.

Respectfully submitted,

ESSEX INSURANCE COMPANY,
- Defendant

By: /s/Tyler J. Coble
Tim N. Cheek – OBA #11257
D. Todd Riddles – OBA #15143
Gregory D. Winningham – OBA #22773
Tyler J. Coble – OBA #30526
CHEEK LAW FIRM, P.L.L.C.
311 North Harvey Avenue
Oklahoma City, Oklahoma 73102
Telephone: (405) 272-0621
Facsimile: (405) 232-1707
tcheek@cheeklaw.com
triddles@cheeklaw.com

gwinningham@cheeklaw.com
tcoble@cheeklaw.com
ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on the same date this Notice of Removal was filed in the United States District Court for the Western District of Oklahoma (October 30, 2015), a true and correct copy of said Notice of Removal was served upon the above-named Plaintiff by mailing and emailing a true and correct copy of the same to the following:

Mark R. McPhail
SPRADLING, KENNEDY & McPHAIL, L.L.P.
The Tower, Suite 1750
1601 NW Expressway
Oklahoma City, OK 73118
mrmcphail@spradlinglaw.com
ATTORNEY FOR PLAINTIFF

I further certify that a copy of this Notice of Removal was sent via U.S. Mail, postage prepaid, to the Court Clerk of the Canadian County District Court, 301 N. Choctaw Street, P.O. Box 730, El Reno, OK 73036.

/s/Tyler J. Coble
Tim N. Cheek/D. Todd Riddles
Gregory D. Winningham/Tyler J. Coble